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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/890,919	08/07/2001	Michael David Bell	CM2034	1792

27752 7590 04/23/2002

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EXAMINER

BERMAN, ALYSIA

ART UNIT	PAPER NUMBER
1617	

DATE MAILED: 04/23/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	09/890,919	BELL ET AL.	
	Examiner	Art Unit	
	Alycia Berman	1617	

-- The MAILING DATE of this communication app ars on the cover she t with th correspondenc address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1) Responsive to communication(s) filed on 18 January 2002.

2a) This action is FINAL. 2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4) Claim(s) 1-13 is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5) Claim(s) _____ is/are allowed.

6) Claim(s) 1-13 is/are rejected.

7) Claim(s) _____ is/are objected to.

8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

11) The proposed drawing correction filed on _____ is: a) approved b) disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.

12) The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

13) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) All b) Some * c) None of:

- Certified copies of the priority documents have been received.
- Certified copies of the priority documents have been received in Application No. _____.
- Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

14) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
a) The translation of the foreign language provisional application has been received.

15) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

1) Notice of References Cited (PTO-892)

2) Notice of Draftsperson's Patent Drawing Review (PTO-948)

3) Information Disclosure Statement(s) (PTO-1449) Paper No(s) 4

4) Interview Summary (PTO-413) Paper No(s). _____

5) Notice of Informal Patent Application (PTO-152)

6) Other: _____

DETAILED ACTION

1. Receipt is acknowledged of the preliminary amendment filed August 7, 2001 and the information disclosure statement filed January 18, 2002. Claims 2-5 and 8-11 have been amended. Claims 1-13 are pending.

Specification

2. The title of the invention is not descriptive. A new title is required that is clearly indicative of the invention to which the claims are directed.
3. The use of the trademarks in the examples has been noted in this application. They should be capitalized wherever they appear and be accompanied by the generic terminology.

Although the use of trademarks is permissible in patent applications, the proprietary nature of the marks should be respected and every effort made to prevent their use in any manner that might adversely affect their validity as trademarks.

Claim Rejections - 35 USC § 112

4. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.
5. Claims 1, 3, 4, 6 and 11-13 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

6. Claim 1 is indefinite because it is unclear if the composition contains between about 6 and 20% of a polyhydric alcohol or more than 20% of a polyhydric alcohol.

7. Claim 1 is indefinite because it recites a concentration range but does not provide units.

8. Claims 3, 4 and 6 are indefinite because they recite the word "derivatives".

Neither the claims nor the specification provides a clear and concise definition of the derivatives Applicant intends to claim. The metes and bounds of the claims cannot be determined.

9. Claim 11 is indefinite because it is unclear what Applicant intends by a cosmetic method of treatment.

10. Claims 12 and 13 provide for the use of a cation containing polymer and a composition, respectively, but, since the claims do not set forth any steps involved in the method/process, it is unclear what method/process applicant is intending to encompass. A claim is indefinite where it merely recites a use without any active, positive steps delimiting how this use is actually practiced.

Claims 12 and 13 are rejected under 35 U.S.C. 101 because the claimed recitation of a use, without setting forth any steps involved in the process, results in an improper definition of a process, i.e., results in a claim which is not a proper process claim under 35 U.S.C. 101. See for example *Ex parte Dunki*, 153 USPQ 678 (Bd. App. 1967) and *Clinical Products, Ltd. v. Brenner*, 255 F. Supp. 131, 149 USPQ 475 (D.D.C. 1966).

Claim Rejections - 35 USC § 102

11. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

12. Claims 1-13 are rejected under 35 U.S.C. 102(e) as being anticipated by WO 94/03150 (150).

WO '150 is directed to compositions intended for washing the human body (abstract). The compositions contain a cationic polymer (abstract) and a polyol such as glycerol (page 8, lines 30-32). For a composition containing glycerol and hydroxypropyltrimonium chloride in concentrations encompassed by the instant claims, see the examples in Table 1 at page 13. The compositions in Table 1 do not contain an anionic, zwitterionic or amphoteric surfactant. The intention of the composition for use in washing the human body implies applying the composition to the skin.

Claim Rejections - 35 USC § 103

13. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

14. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of

the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

15. Claims 1-13 are rejected under 35 U.S.C. 103(a) as being unpatentable over WO 94/03150 (150)

WO '150 teaches all the limitations of the claims as stated in the 35 U.S.C. 102(b) rejection above. It does not explicitly teach application of the composition to the skin. The compositions are intended for washing the human body.

It would have been obvious to one of ordinary skill in the art at the time of the invention to apply the compositions of WO '150 to the skin with the reasonable expectation of delivering oil components to the skin.

Correspondence

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Alysia Berman whose telephone number is 703-308-4638. The examiner can normally be reached Monday through Friday between 9:00 am and 5:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Minna Moezie, can be reached on 703-308-4612. The fax phone numbers

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for the organization where this application or proceeding is assigned are 703-872-9306 or 703-872-9307 for after-final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-1234 or 703-308-1235.



Alyssia Berman
Patent Examiner
April 15, 2002

RUSSELL TRAVERS
PRIMARY EXAMINER
GROUP 1200